Supreme Court, U.S.
FILED

No. (1) 10-502

MAY 19 2010

OFFICE OF THE CLERK

In the Supreme Court of the United States

Joseph Dixon,

Petitioner,

vs.

Deutsche Bank National Trust Company,
Nationscredit Home Equity Loan Trust,
Select Portfolio Servicing Inc.,
Fairbanks Capital Corporation
and Balboa Life and Casualty,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Joseph Dixon
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e-mail: *jd.0001@yahoo.com*

Petitioner, pro se

2010 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

QUESTIONS PRESENTED

1. Did the lower courts abuse its judicial discretionary power or comply with the Acts of the United States Congress as established in the United States Constitution and in other applicable laws, Fed. R. Civ. P. Rules 4, 7, 11, 55, 56, and 60, Const. Amends. I, III, IV, V, VI, VII, XIII, and XIV and Fed. R. Civ. P. Rule 120, as Relates to this case, Property Rights, right to petition the government for redress of grievances, due process of law and equal protection of law?

2. Should the laws of the United States Congress be enforced or complied with consistently by all courts irrespective of being *pro se* or African-American? If the answer is yes, did the 8th Circuit Courts comply or enforce Fed. R. Civ. P. Rule 4(a), Fed. R. Civ. P. Rule 55(a)(b), or otherwise to defend, FRAP 40, Untimely Filing, Fed. R. Civ. P. Rule 11, Perjury by Respondents, an excess of 74 days lapse with no answer to summons and complaint, and by vacating Clerk of Court's entry of Default Judgment and Docketed Judgment?

3. Has the Eighth Circuit Court been inconsistent with the interpretation and rulings of the laws of similar cases of same Defendants, similar acts and conducts, same or similar charges, same laws involved but different results and interpretation of law, ambiguity of the law Causes to errors of courts or multiple interpretations of the laws of inconsistency?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February, 18, 2010

[ ] No petition for reheating was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Feb. 18, 2010, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ___(date) on____(date) in Application. No. _____A ___.

The jurisdiction of this Court is invoked under 28

U. S.C. §1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was_____ . A copy of that decision appears at Appendix_____.

[ ] A timely petition for rehearing was thereafter denied on the following date:_____, and a copy of the order denying rehearing appears at Appendix ___.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including ___(date) on____(date) in Application. No. _____A ___.

The jurisdiction of this Court is invoked under 28 U. S.C. §1257(a).

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix page A-1 to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix __ to the petition and is

[ ] reported at _____; or,
[ ] has been designate for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The **opinion** of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Rule 9, Appearance of Counsel, Supreme Court Rule, U.S.C. § 3006A(d)(6), Rule 34.1(f).
2. Supreme Court Rule 10, Writ or Certiorari.
3. Rule 11; 28 U.S.C. § 2101(e).
4. Rule 12, Petition for Writ of Certiorari, Rule 33.1, Rule 38(a), Docket Fee. Rule 33.2, Compliance. Rule 29, Notice, Rule 14, Rule 31.1, Rule 12.2, Rule 39, Rule 13.4.
5. Rule 13, Review on Certiorari: Time for Petitioning 90 days; 28 U.S.C. § 2101(c), Rule 12.5, Rule 21, 22, 30, and 32.2.
6. Rule 14 Questions Presented. Rule 29.6, Rule 11, Rule 12.5, Rule 29.4(b) & (c), Rule 14, Rule 33, 34, 29 Appendix and Timely Filing.
7. Rule 15 Brief in Opposition; Reply Briefs, Supplemental Brief; Rule 14.1(a). Rule 24, Rule 16 Disposition; Rule 15.
8. Rule 17, 0ther Jurisdiction - Original Action Procedures.
9. Article III of the Constitution of the United States. See also 28 U.S.C. §1251, U.S. Const. Amend. 11 provided by Rule 20.

10. Const. Amends. I, II, V, VI, VII, VIII, XIII, XIV. Fed R. Civ. P. 4, 7, 11, 55, 56, 60.

11. Rule 18 of the Supreme Court Rules, Appeal from District Court.

12. Rule 21, 22, 30, Extension of Time. 28 U.S.C. §1254.

13. 28 U.S.C. § 1651, 2241, or § 2254(a), Rule 33, 34, Rule 29, Rule 12.2, Rule 21, Rule 22, Rule 17.3, Rule 18.5, Rule 22, Rule 23 Stay, Rule 24 Brief on the Merits and oral argument.

14. Rule 37, Rule 38, Fees. Rule 18.5, U.S.C. § 1911, Rule 39, Rule 41, Opinions of Court, Rule 42, Interests and damage, Rule 43 Costs, Rule 19.2, 28 U.S.C. § 2412, Rule 44 Hearing.

15. Rule 45, Process, Mandates, 28 U.S.C. § 451, Rule 46 Dismissal.

16. Rule 47, Reference to State Court and State Law, Rule 48, Effective Date Rule.

STATEMENT OF THE CASE

1. Respondents in conversion of Appellant, Joseph Dixon's Real Estate Deed and Trust residential Home, auctioned it without right to do so. No notice was served upon owner Joseph Dixon whose residence being 1710 Fremont Avenue, Minneapolis, Minnesota, and only home. The Laws of Congress, property Rights violated, Foreclosure laws and Procedures were not complied with. Jurisdiction of the court was never initiated by Respondent in the Auction of Petitioner's deed and Trust private Real estate property, Fed R. Civ. P. 120, Foreclosure of deed and Trust property. Jurisdiction of court must be

initiated; notice must be served upon the owner, and filed with the Court; notice of hearing must be served stating Date, Place and time; and proof of service must be Filed with the court. None of these laws were complied with in the auction of Petitioner's deed and Trust real estate property, Due Process and Equal Protection of Law denied, enforcement.

2. Summons and Complaint served by United States Marshal by Personal Service upon each Defendant-Respondent: Fairbanks Capital Corporation, Deutsche Bank National Trust Company, Select Portfolio Servicing, Inc. Nationscredit Home Equity Loan trust and Balboa Life and Casualty. Each Defendant served at their Place of business and signed Affidavit Receipt of Proper service by U.S. Marshal. The U.S. Marshal is a Federal official Officer of the Court, professionally trained to execute proper and effective Service of Summons and Complaint. U.S. Marshal signed and Notarized Affidavit of Effective service upon each defendant. Fed. R. Civ. P. 4, Answers to Summons and Complaint must be served and filed upon Plaintiff, and with the court within 20 Days of service, legal deadline. Respondents let time limitation run in excess of 74 days after Legal deadline, did not file or serve an answer, and did not appear for court trial, and did not File for enlargement of time nor any representation of counsel. Petitioner Joseph Dixon filed for Default Judgment against Defendants. Clerk of Court made Entry of default Judgment against Deutsche Bank National Trust Company and Nationscredit Home equity Loan Trust, in favor of Appellant, Joseph Dixon, which was

subsequently vacated by the Court.

3. Whether or not the intention was ever for the Defendants to, in concert, steel plaintiff, Joseph Dixon's real estate residential deed and trust property, in disguise, Fairbanks Capital Corporation did change its name and did not serve notice of name change upon Plaintiff, property owner, Joseph Dixon. In disguise, and with intent to evade the Massachusetts Court, the Federal Trade Commission, the United States of America and Allana L. Curry who for the same period of time involved, had investigated Fairbanks Capital Corp. of Rip-off of Home owners' mortgage loans, fraudulent charges, unlawful foreclosure, fraudulent insurance policy, fraudulent bill, a nationwide investigation by FTC and Allana L. Curry. The nationwide Federal investigations into Fairbanks Capital Corp.'s handling of national mortgage loans and its unlawful foreclosure of homes nationwide found that Fairbanks Capital Corporation and it affiliates were in violation of the FTC Act, Federal RICO laws and illegal foreclosure. Court case file in Massachusetts Court against Fairbanks and its affiliates. *See* Case Allana L Curry v. Fairbanks Capital Corp., et al., Case No. 03-10895, Class action, FTC- United States v. Fairbanks Capital Corp. et al., 03-12219 DPW. Case Joseph Dixon v. Fairbanks Capital Corp., Case No. 08-3449. Similar cases but different results errors of court.

DEFAULT JUDGMENT ENTERED BY CLERK OF COURT AGAINST DEUTSCHE BANK AND NATIONSCREDIT HOME EQUITY LOAN TRUST FOR FAILURE TO PLEAD OR OTHERWISE DEFEND.

1. The U.S. Clerk of Court, upon Plaintiff's Motion for Entry of Default Judgment against Defendant for failure to answer summons and complaint within the legal deadline allowed by law, but Defendants had chosen not to respond to the summons and complaint served upon them by personal service by the Federal United States marshal. Then they allowed 74 days to lapse or run and did not file or serve its answer to the summons and complaint. Defendants did not appear in court for it's own Trial held in Duluth Federal Court. They were not represented; did not file for enlargement of time to do so; and did not file for representation of counsel. Rule 4(a)m, Rule 55 of Fed. R. Civ. P. was filed and granted by the Clerk of Court.

2. By fraud Defendants, by perjury, made knowingly false statements to the court that they were never served the summons and complaint by the United States Marshal. The Affidavit of Service signed by Defendants and by the United States Marshal filed by the United States Marshall of personal service made upon the Defendants-which they signed a receipt of proper personal service. The court, by fraud upon the court, vacated the default judgment entered in favor of Joseph Dixon by the Clerk of Court.

3. The Court failed to enforce the Law, Rule 4 and Rule 55 of Federal Civil Procedure. The United

States strictly enforces Rule Civ. P. 4, and 55, untimely filing and default Judgment for failure to plead or otherwise to defend.

4. *See* appeal and trial motions. January 5, 2006- theft and illegal foreclosure is not *res judicata*, was not litigated before, and the unlawful foreclosure could not be prosecuted before the date around January 5, 2006, when defendant committed the acts and conducts. Error of Court, Plaintiff, Joseph Dixon.

ARGUMENT

Three similar cases same defendants, same charges, same laws involved, but different Results:

A. Case: Ailana L. Curry, Marlene L Brenes and Thomas 0. White, individually and on behalf of all others similar situated v. Fairbanks Capital Corp. case No. 03-10895 - DPW.

B. FTC.- United States of America et al. v. Fairbanks Capital Corp. et al., Civil Action No. 03-12219- DPW.

C. Joseph Dixon v. Fairbanks Capital Corp. et al., Case Nos. 08-3449, 08-3449, 8th Cir., No. 07-1437, Rip Offs by Fairbanks Capital Corporation Nationwide. *See* complaint in all three cases.

D. Did the Eight Circuit Court rule in favor of Joseph Dixon's case herein presented to this court?

E. What crime did Plaintiff, Joseph Dixon commit to warrant being barred by the court from due process and equal protection of law, to be stripped and deprived of constitutional privileges being born African-American, black being forced homeless, deed and trust real estate property being stolen and cannot get a fair trial in the courts of proper

jurisdiction within the state Plaintiff is a citizen. *See* court cases.

REASONS FOR GRANTING THE PETITION

1. On or about January 5, 2006 Respondents stole Plaintiff Joseph Dixon's real estate property and auctioned it in violation of Federal Laws Fed. R. Civ. P. Rule 120.

2. The court failed to comply and enforce the laws of Congress, Fed. R. Civ. P. Rule 120, and Rule 4, failure to answer summons and complaint within the legal deadline, but instead, let the time limitation run in excess of 74 days, and after the clerk had entered Default Judgment against the defendants and the Default Judgment was docketed by the court in favor of Plaintiff, Joseph Dixon, by perjury and fraud thereafter, the defendant had the judgment vacated by fraud upon the court.

3. Differential of treatment by the courts towards plaintiff, Joseph Dixon, *pro se*; inconsistency of courts in interpretation of *res judicata*, and of Rules 4 of Civ. P., and Fed. R. Civ. P. Rule 120, and Fed. R. Civ. P. Rules 55 and 56. Plaintiff is forced homeless by the corrupt organization of Respondents. Plaintiff, Joseph Dixon and the nation being ripped off by Respondents, Fairbanks Capital Corp. et al.

4. Judgment obtained by Fraud must be vacated-it does not become good after a time being uncorrected.

5. It is not only Joseph Dixon being ripped off by Fairbanks Capital Corp. and its affiliates, but the

entire nation being ripped off by Defendants. *See* Rip Off Reports on the Internet, and FTC- United States v. Fairbanks Capital Corp., et al.. *See also* Allana L. Curry v. Fairbanks capital Corp.

6. Plaintiff, Joseph Dixon is entitled to Judgment against Defendants for the Amount Demanded in the summons and complaint against of $107,000,000.00 plus reasonable attorneys fees and court costs.

7. Court Abused its discretionary power and the laws of Congress must be consistent in its interpretation, irrespective of race, nationality or being *pro se*.

CONCLUSION

Petitioner Joseph Dixon is entitled to Judgment against Defendants. The Clerk of Court Properly entered Default Judgment in favor of Joseph Dixon. An excess of 74 days lapsed and Defendants did not serve or file its answers to the summons and complaint, which is strictly enforced by the Supreme Court of the United States. Joseph Dixon did not get an opportunity of Justice by the courts to defend his property, and Rule 60 was not met in the foreclosure auction sale. *Res judicata* is not applicable in this case of January 5, 2006. 2006 illegal conducts could not be prosecuted prior to being committed. Plaintiff, Joseph Dixon, petitions the court for judgment for the amount demanded. Plaintiff petitions that the court overturn the untimely filing of the vacation of judgment, with sanctions and judgment in favor of Joseph Dixon.

Judgment is warranted for enforcement, to deter, and

to punish the wrongdoer. Plaintiff is currently forced homeless and is now renting from public housing, indigent.

Let there be Judgment in favor of Joseph Dixon. Judgment for one hundred and seven million dollars. [Compensation plus reasonable Attorney fees and court costs.]

Prayer that the Eighth Circuit Judgment be vacated. Prayer that the lower court barring Joseph Dixon from filing cases in Minnesota Courts be vacated it is unconstitutional and violates Const. Amends. I, XIII, and XIV.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph Dixon

Date: May 17, 2010

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 08-3449 8th CIR

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 08-3449

Joseph Dixon,
Appellant

v.

Deutsche Bank National Trust Company, et al.,
Appellees

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:06-cv-02858-PJS)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied. Judge Bye did not participate in the consideration or decision of this matter.

February 18, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 08-3449

Joseph Dixon,
Plaintiff-Appellant

v.

Deutsche Bank National Trust Company; Nationscredit Home Equity Loan Trust; Select Portfolio Servicing, Inc.; Fairbanks Capital Corporation; Balboa Life and Casualty,
Defendants – Appellees

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:06-cv-02858-PJS)

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

January 13, 2010

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-3449

Joseph Dixon, Appellant, v. Deutsche Bank National Trust Company; Nationscredit Home Equity Loan Trust; Select Portfolio. Servicing, Inc.; Fairbanks Capital Corporation; Balboa Life and Casualty, Appellees.	Appeal from the United States District Court for the District of Minnesota. [UNPUBLISHED]

Submitted: December 28, 2009
Filed: January 13, 2010

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Joseph Dixon appeals the district court's[1] adverse grant of summary judgment and denial of his motion to reopen a default judgment. After careful de

[1] The Honorable Patrick J. Schiltz, United States District Judge for the District of Minnesota, adopting the reports and recommendations of the Honorable Raymond L. Erickson, United. States Magistrate Judge for the District of Minnesota.

novo review, viewing the evidence and all fair inferences from it in the light most favorable to Dixon, see Johnson v. Blaukat, 453 F.3d 1108, 1112 (8th Cir. 2006), we find no reversible error.

First, as to the claims related to the foreclosure of Dixon's property and the insurance policies provided by Balboa Life and Casualty, we conclude that summary judgment was proper for the reasons stated by the district court. Second, we conclude that the remaining claims against Deutsche. Bank National Trust Company, Nationscredit Home Equity Loan Trust, Select Portfolio Servicing, Inc., and Fairbanks Capital Corporation were barred by res judicata. See United States v. Brekke, 97 F.3d 1043, 1047 (8th Cir. 1996) (listing factors determining whether res judicata applies); see also Yankton Sioux Tribe v. U.S. Dep't of Health & Human Servs., 533 F.3d 634, 639 (8th Cir. 2008) (under res judicata, final judgment on merits of action precludes parties from relitigating issues that were or could have been raised in that action); In re Marlar, 267 F.3d 749, 754 (8th. Cir. 2001) (describing privity requirement). Further, we conclude that the district court did not abuse its discretion in denying Dixon's motion to reopen the default judgment. See Murphy v. Mo. Dep't of Corr., 506 F.3d 1111, 1117 (8th Cir. 2007) (standard of review).

The district court also enjoined Dixon from filing any further lawsuits in the district court unless the pleadings are signed, pursuant to Federal Rule of Civil Procedure 11, by an attorney admitted to the court, or a judicial officer has authorized the filing of such pleadings in advance. In these circumstances, we believe it is appropriate to modify the injunction

so that it prohibits Dixon, absent compliance with the listed requirements, from filing in the district court any further lawsuits related to the mortgage or foreclosure on his property. See Cromer v. Kraft Foods N. Am., Inc., 390 F.3d 812, 817-19 (4th Cir. 2004); Safir v. U.S. Lines, Inc., 792 F.2d 19, 25 (2d Cir. 1986).

Accordingly, we affirm the judgment as modified. We deny Dixon's motions for sanctions.

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans *Clerk of Court*	VOICE (314) 244-2400 FAX (314) 244-2780

April 19, 2007

Mr. Joseph Dixon
P.O. Box 580050
Minneapolis, MN 55458-0050

RE: 07-1437 Joseph Dixon v. Deutsche Bank National Trust C, et al

Dear Mr. Dixon:

Enclosed is a copy of an order entered today in the above case at the direction of the court.

Michael E. Gans
Clerk of Court

mer
Enclosure(s)
cc: Mr. Joseph James Mihalek
Mr. Richard Sletten
Ms. Kristine M. Spiegelberg
Mr. Lawrence Paul Zielke

District Court/Agency Case Number(s): 0:06-cv-02858-PJS

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 07-1437

Joseph Dixon,
Appellant

v.

Deutsche Bank National Trust Company, et al.,
Appellees

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:06-cv-02858-PJS)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

April 19, 2007

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans *Clerk of Court*	VOICE (314) 244-2400 FAX (314) 244-2780

March 14, 2007

Mr. Joseph Dixon
P.O. Box 580050
Minneapolis, MN 55458-0050

RE: 07-1437 Joseph Dixon v. Deutsche Bank National Trust C, et al

Dear Mr. Dixon:

Enclosed is a copy of the dispositive order in the referenced appeal. Please note that FRAP 40 of the Federal Rules of Appellate Procedure requires any petition for rehearing to be filed within 14 days after entry of judgment. This court strictly enforces the 14 day period. **No grace period for mailing is granted.** A petition for rehearing or a motion for an extension of time must be filed with the Clerk's office within the 14 day period.

In counseled cases, any petition for panel rehearing or petition for rehearing en banc that is filed must also include a diskette or CD-Rom containing an electronic version of your petition. The diskette or CD-Rom must be submitted in Portable Document Format(PDF) and scanned for viruses, in conformance with the requirements set forth in 8th

Cir. R. 28A(d)(2) and (3).

Michael E. Gans
Clerk of Court

mer
Enclosure(s)

cc: Mr. Joseph James Mihalek
Mr. Richard Sletten
Ms. Kristine M. Spiegelberg
Mr. Lawrence Paul Zielke

District Court/Agency Case Number(s): 0:06-cv-02858-PJS

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 07-1437

Joseph Dixon,
Appellant

v.

Deutsche Bank National Trust Company, et al.,
Appellees

Appeal from U.S. District Court for the District of Minnesota - Minneapolis
(0:06-cv-02858-PJS)

JUDGMENT

The court has carefully reviewed the original file of the United States District Court and orders that the motion to dismiss the appeal for want of an appealable order is granted. This appeal is hereby dismissed. Appellant's motion for expedited appeal and judgment is denied.

March 14, 2007

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

General Docket
Eighth Circuit Court of Appeals

Court of Appeals Docket #: 07-1437
Nature of Suit: 3440 Other Civil Rights

Joseph Dixon v. Deutsche Bank National Trust C, et al

Appeal From: U.S. District Court for the District of Minnesota – Minneapolis
Fee Status: In Forma Pauperis

Docketed: 02/27/2007 **Termed:** 03/14/2007

Case Type Information:
1) Civil
2) Private
3) null

Originating Court Information:
District: 0864-4 : 0:06-cv-02858-PJS
Trial Judge: Patrick J. Schiltz, U.S. District Judge
Date Filed: 06/30/2006
Date Order/Judgment: 01/31/2007
Date NOA Filed: 02/13/2007
Date Rec'd COA: 02/26/2007

Prior Cases: None
Current Cases: None

Joseph Dixon
Plaintiff - Appellant

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v.

Deutsche Bank National Trust Company
Defendant - Appellee

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(see above)

Joseph Dixon,
Plaintiff – Appellant

v.

Deutsche Bank National Trust Company; Nationscredit Home Equity Loan Trust; Select Portfolio Servicing, Inc.; Fairbanks Capital Corporation; Balboa Life and Casualty,
Defendants - Appellees

03/13/2007	Civil case docketed. [3287759] [07-1437] (CYZ)
03/13/2007	Originating court document filed consisting of notice of appeal, order adopting R&R dated 1/31/07, order of 9/12/06 denying motion to appoint counsel but without prejudice, docket entries, [3287781] [07-1437] (CYZ)
03/13/2007	MOTION of Appellees Deutsche Bank National Trust Company, Fairbanks Capital Corporation and Nationscredit Home Equity Loan Trust Attorney Ms. Kristine M. Spiegelberg for Appellees Fairbanks Capital Corporation, Deutsche Bank National Trust Company, Nationscredit Home Equity Loan Trust, Select Portfolio Servicing and Balboa Life and Casualty to dismiss case. w/service 02/22/2007. [3287786] [07-1437] (CYZ)
03/13/2007	MOTION of Appellant Mr. Joseph Dixon for expedited appeal. w/service 01/23/2007. [3287788] [07-1437] (CYZ)
03/13/2007	CASE SUBMITTED Ad Panel Submission before Roger L. Wollman; Michael J. Melloy; Raymond W. Gruender in St. Louis [07-1437] (MER)

03/13/2007	Originating court document filed consisting of notice of appeal, order adopting R&R dated 1/31/07, order of 9/12/06 denying motion to appoint counsel but without prejudice, docket entries, [3287781] [07-1437] (CYZ)
03/13/2007	MOTION of Appellees Deutsche Bank National Trust Company, Fairbanks Capital Corporation and Nationscredit Home Equity Loan Trust Attorney Ms. Kristine M. Spiegelberg for Appellees Fairbanks Capital Corporation, Deutsche Bank National Trust Company, Nationscredit Home Equity Loan Trust, Select Portfolio Servicing and Balboa Life and Casualty to dismiss case. w/service 02/22/2007. [3287786] [07-1437] (CYZ)
03/13/2007	MOTION of Appellant Mr. Joseph Dixon for expedited appeal. w/ service 01/23/2007. [3287788] [07-1437] (CYZ)
03/13/2007	CASE SUBMITTED Ad Panel Submission before Roger L. Wollman; Michael J. Melloy; Raymond W. Gruender in St. Louis [07-1437] (MER)
03/14/2007	JUDGMENT FILED -Case dismissed for want of an appealable order; Granting [3287786-2] motion to dismiss case filed by Fairbanks Capital Corporation, Deutsche Bank National Trust Company, Nationscredit Home Equity Loan Trust and Attorney Ms. Kristine M. Spiegelberg for Appellees Fairbanks Capital Corporation, Deutsche Bank National Trust Company, Nationscredit Home Equity Loan Trust, Select

	Portfolio Servicing and Balboa Life and Casualty.; denying [3287788-2] motion for expedited appeal filed by Party Mr. Joseph. Dixon. ROGER L. WOLLMAN ; MICHAEL J. MELLOY ; RAYMOND W. GRUENDER [3288406] [071437] (MER)
03/14/2007	Response of Appellant. Mr. Joseph Dixon , in opposition to motion to dismiss case, [3287786-2], filed by Fairbanks Capital Corporation, Deutsche Bank National Trust Company, Nationscredit Home Equity Loan Trust and Ms. Kristine M. Spiegelberg for Fairbanks Capital Corporation, Deutsche Bank National Trust Company, Nationscredit Home Equity Loan Trust, Select Portfolio Servicing and Balboa Life and Casualty in 07-1437. w/service 03/14/2007 [3288657] [07-1437] (MER)
03/21/2007	Tendered document from Appellant Mr. Joseph Dixon. Forwarded from district court (rec'd in d.c. 3/6/07) - Duplicate filing of appellant's motion for expedited appeal filed in this court March 13, 2007[07-1437] (MER)
03/27/2007	PETITION for enbanc rehearing filed by Appellant Mr. Joseph Dixon. w/service 03/23/2007 [3292713] [07-1437] (MER)
04/19/2007	JUDGE ORDER: denying [3292713-2] petition for enbanc rehearing filed by Appellant Mr. Joseph Dixon. Petition for panel rehearing is also denied. (Adp Apr 2007) [3300640][07-1437] (MER)
04/26/2007	MANDATE ISSUED. [07-1437] (MER)
05/03/2007	Tendered service copy of document filed

	in district court "Plaintiffs Notice to Defendants of Scheduled Pretrial Conference Rule 26". Received from Appellant Mr. Joseph Dixon. w/service 05/01/2007 [07-1437] (MER)
06/04/2007	Tendered service copy of document filed in distict court "Plaintiffs Statement of the Case". Received from Appellant Mr. Joseph Dixon. w/service 05/29/2007 [07-1437] (MER)

General Docket
Eighth Circuit Court of Appeals

Court of Appeals Docket #: 08-3449
Nature of Suit: 3440 Other Civil Rights
Joseph Dixon v. Deutsche Bank National Trust, et al
Appeal From: U.S. District Court for the District of Minnesota – Minneapolis
Fee Status: In Forma Pauperis

Docketed: 10/24/2008 **Termed:** 01/13/2010

Case Type Information:
4) Civil
5) Private
6) null

Originating Court Information:
District: 0864-4 : 0:06-cv-02858-PJS
Court Reporter: Jean Arends, Court Reporter
Trial Judge: Patrick J. Schiltz, U.S. District Judge
Date Filed: 06/30/2006
Date Order/Judgment: 09/03/2008
Date NOA Filed: 09/29/2008
Date Rec'd COA: 10/15/2008

Prior Cases: 07-1437
Date Filed: 02/27/2007
Date Disposed: 03/14/2007
Disposition: Dismiss case for lack of jurisdiction
Current Cases: None

Joseph Dixon
Plaintiff - Appellant

Joseph Dixon
[NTC Pro Se]

P.O. Box 580050
Minneapolis, MN 55458-0050

v.

Deutsche Bank National Trust Company
Defendant - Appellee

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Nationscredit Home Equity Loan Trust
Defendant - Appellee

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Select Portfolio Servicing, Inc.
Defendant - Appellee

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Fairbanks Capital Corporation
Defendant - Appellee

Joseph James Mihalek
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Defendant - Appellee

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Minneapolis, MN 55402-0000

Joseph Dixon,
Plaintiff – Appellant

v.

Deutsche Bank National Trust Company; Nationscredit Home Equity Loan Trust; Select Portfolio Servicing, Inc.; Fairbanks Capital Corporation; Balboa Life and Casualty,
Defendants - Appellees

10/24/2008	Civil case docketed. [3483723] [08-3449] (CYZ)
10/24/2008	Originating court document filed consisting of notice of appeal, R&R dated 8/1/08, order adopting R&R dated 9/3/08, judgment of 9/3/08, district court docket entries link, [3483759] [08-3449] (CYZ)
10/24/2008	RECORD FILED - Record Part: ORIGINAL FILE, No. of Volumes: 5, Volumes Location: STP, Source Location: D.C. [3483723] [08-3449] (CYZ)
10/24/2008	DOCUMENT FILED - entitled "Certificate of Compliance" filed by Mr. Joseph Dixon. w/service 09/29/2008 [3483759] [08-3449] (CYZ)
10/24/2008	BRIEFING SCHEDULE SET AS FOLLOWS: Transcript due on or before 12/03/2008. Brief appellant, Joseph Dixon due 12/15/2008 Appellee brief is due 30 days following service of appellant's brief. Appellant reply brief is due 14 days following service of appellee brief. [3483767] [08-3449] (CYZ)
10/27/2008	CORPORATE disclosure statement filed by Appellee Balboa Life and Casualty. - FOR CAL. [3484196] [08-3449] (RES)
10/27/2008	APPELLEE'S FORM B RECEIVED from Appellee Balboa Life and Casualty [08-3449] (RES)
10/27/2008	CORRECTED certificate of service for disclosure , Doc No. [3484196-2], disclosure for Calendar, Doc No. [3484196-3], filed by Appellee Balboa Life and Casualty [3484214] [08-3449]

(RES)

12/01/2008 MOTION for appointment of counsel, for preparation of transcript at government expense, filed by Party Mr. Joseph Dixon. w/ service 11/26/2008. [3494774] [08-3449] (CYZ)

12/15/2008 MOTION for extension of time to file brief until 12/29/2008, filed by Party Mr. Joseph Dixon. w/ service 12/15/2008. [3499072] [08-3449] (JMB)

12/16/2008 JUDGE ORDER: Appellant's motions for appointment of counsel and for preparation of transcript at government expense have been considered by the court and are denied. [3494774-2] [3494774-3]. Adp Dec 2008 [3499586] [08-3449] (CYZ)

12/16/2008 BRIEFING SCHEDULE SET AS FOLLOWS: Transcript due on or before 01/26/2009. Brief appellant, Joseph Dixon due 02/04/2009 Appellee brief is due 30 days following service of appellant's brief. Appellant reply brief is due 14 days following service of appellee brief. [3499596] [08-3449] (CYZ)

01/13/2009 APPELLEE'S FORM B RECEIVED from Appellees Deutsche Bank National Trust Company, Fairbanks Capital Corporation, Nationscredit Home Equity Loan Trust and Select Portfolio Servicing [08-3449] (KMS)

01/13/2009 CORRECTED certificate of service for settlement form, Doc No. [3506736-2], filed by Appellees Deutsche Bank National Trust Company, Fairbanks

	Capital Corporation and Nationscredit Home Equity Loan Trust [3506845] [08-3449] (KMS)
02/05/2009	BRIEF FILED - APPELLANT BRIEF filed by Mr. Joseph Dixon , w/service 02/09/2009 33 PDF pages, No Addendum 5 copies. Words/lines/pages 33 pages. Appellee/Responsive brief of Balboa Life and Casualty, Deutsche Bank National Trust Company, Fairbanks Capital Corporation, Nationscredit Home Equity Loan Trust and Select Portfolio Servicing due on 03/11/2009. [3514957] [08-3449] (LAB)
03/05/2009	BRIEF FILED - APPELLEE BRIEF filed by Deutsche Bank National Trust Company, Fairbanks Capital Corporation, Nationscredit Home Equity Loan Trust and Select Portfolio Servicing, w/service 03/03/2009 25 PDF pages, No Addendum 10 copies. Words/lines/pages 3,226 words. [3523952] [083449] (LAB)
03/13/2009	BRIEF FILED - APPELLEE BRIEF filed by Balboa Life and Casualty, w/service 03/11/2009, 37 PDF pages, NoAddendum 10 copies. Words/lines/pages 29 pages. Reply brief of Joseph Dixon due on 03/25/2009. [3526585] [08-3449] (LAB)
03/18/2009	RECORD FILED - Record Part: TRANSCRIPT, No. of Volumes: 1, Volumes Location: STL, Comments: District court document 101 [Faxed copy do not return to the district court at end of case], Source Location: USDC /

MNMI, Dt. of Proceeding/Hearing: 09/14/2006, No. of Pgs.: 40 [3528061] [08-3449] (STL)

03/27/2009 BRIEF FILED - APPELLANT REPLY BRIEF filed by Mr. Joseph Dixon, 40 PDF pages, No Addendum, 5 copies. Words/lines/pages39 pages. [3531523] [08-3449] (LAB)

03/30/2009 DOCUMENT FILED - certificate of compliance filed by Mr. Joseph Dixon. [353 f904] [08-3449] (LAB)

04/03/2009 LETTER from Appellee Balboa Life and Casualty regarding *second closing brief* w/service 04/03/2009 [3533448] [08-3449] (RES)

04/13/2009 LETTER from Appellees Deutsche Bank National Trust Company, Fairbanks Capital Corporation, Nationscredit Home Equity Loan Trust and Select Portfolio Servicing regarding *second closing brief.* w/ service 04/10/2009 [3536459] [U8-3449] (KMS)

04/15/2009 LETTER from Appellee Balboa Life and Casualty regarding *response to Appellant Dixon's Motion for Sanction on Grounds of Perjury by Balboa Life and Casualty.* w/service 04/15/2009 [3537194] [08-3449] (RES)

04/15/2009 MOTION for Enforcement of Sanctions, filed by Party Mr. Joseph Dixon. w/service 04/13/2009. [3537396] [08-3449] (LAB)

04/17/2009 MOTION for Enforcement of sanctions against Deutsche Bank NationalTrust, filed by Party Mr. Joseph Dixon. w/ service 04/15/2009. [3538527] [08-3449]

(LAB)

05/08/2009 CLERK ORDER: motion for enforcement filed by Appellant Mr. Joseph Dixon in 08-3449 , [3538527-2], motion for enforcement filed by Appellant Mr. Joseph Dixon in 08-3449 , [3537396-2], letter regarding motion to enforce filed by Appellee Balboa Life and Casualty in 08-3449, [353.71942] is hereby ordered taken with the case for consideration by the panel to which this case is submitted for disposition on the merits. - FOR CAL. [3545312] [08-3449] (LAB)

12/28/2009 CASE SUBMITTED Screening Case Submission before Judges Diana E. Murphy, Steven M. Colloton, Bobby E. Shepherd in St. Louis [08-3449] (PAW)

01/13/2010 PER CURIAM OPINION FILED - THE COURT: DIANA E. MURPHY, STEVEN M. COLLOTON and BOBBY E. SHEPHERD (UNPUBLISHED); denying [3538527-2] motions for sanctions filed by Appellant Mr. Joseph Dixon. [3537396-2] [3623886] [08-3449] (DMH)

01/13/2010 JUDGMENT FILED - The judgment of the Originating Court is AFFIRMED in accordance with the opinion. DIANA E. MURPHY, STEVEN M. COLLOTON and BOBBY E. SHEPHERD Scrg [3623889] [08-3449] (DMH)

01/28/2010 PETITION for enbanc rehearing filed by Appellant Mr. Joseph Dixon w/service 01/28/2010 [3629165] [08-3449] (PAW)

02/18/2010 JUDGE ORDER: denying [3629165-2] petition for enbanc rehearing filed by

	Appellant Mr. Joseph Dixon. Petition for panel rehearing is also denied. Scrg Dec 2009 [3635331] [08-3449] (PAW)
02/25/2010	MANDATE ISSUED. [3638404] [08-3449] (PAW)

Supreme Court, U.S.
FILED

No. 10-502 MAY 19 2010

OFFICE OF THE CLERK

In the Supreme Court of the United States

Joseph Dixon,

Petitioner,

vs.

Deutsche Bank National Trust Company,
Nationscredit Home Equity Loan Trust,
Select Portfolio Servicing Inc.,
Fairbanks Capital Corporation
and Balboa Life and Casualty,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITIONER'S SUPPLEMENTAL APPENDIX

Joseph Dixon
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Minneapolis, Minnesota 55401
(612) 715-1972
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Petitioner, pro se

2010 – Bachman Legal Printing ■ (612) 339-9518 ■ 1-800-715-3582 ■ Fax (612) 337-8053

SUPPLEMENTAL APPENDIX INDEX

Order Adopting Report and Recommendation and Imposing Sanctions, filed November 3, 2008.. SA-1

Report and Recommendation of the U.S. Magistrate, filed August 1, 2008..... SA-4

Clerk's Entry of Default, U.S. District Court, District of Minnesota, dated November 2, 2006..... SA-36

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOSEPH DIXON, Civil No. 06-2858 (PJS/RLE)

Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, NATIONSCREDIT HOME EQUITY LOAN TRUST, SELECT PORTFOLIO SERVICING, INC., FAIRBANKS CAPITAL CORPORATION, and BALBOA LIFE AND CASUALTY,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION AND IMPOSING SANCTIONS

Joseph Dixon, pro se.

Joseph J. Mihalek, FRYBERGER BUCHANAN SMITH & FREDERICK, PA; Kristine M. Speigelberg, Lawrence P. Zielke, SHAPIRO, NORDMEYER & ZIELKE, LLP, for defendants Deutsche Bank National Trust Company, Nationscredit Home Equity Loan Trust, Select Portfolio Servicing, Inc., and Fairbanks Capital Corporation (collectively, "the Deutsche Bank defendants").

Robert E. Salmon, MEAGHER & GEER, PLLP, for defendant Balboa Life and Casualty.

This matter is before the Court on plaintiff Joseph Dixon's objection to the August 1, 2008 Report and Recommendation ("R&R") of Chief Magistrate Judge Raymond L. Erickson. The Court has reviewed de novo those portions of the R&R to which Dixon has objected, as required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), and adopts Judge Erickson's thorough and well-reasoned R&R.

ORDER

Based on the foregoing and on all of the files, records, and proceedings herein, the Court OVERRULES Dixon's objection [Docket No. 233] and ADOPTS Judge Erickson's Report and Recommendation [Docket No. 232]. Accordingly, IT IS HEREBY ORDERED THAT:

1. The motions of the Deutsche Bank defendants for sanctions [Docket No. 183] is GRANTED.
2. The motion of the Deutsche Bank defendants for summary judgment [Docket No. 189] is GRANTED.
3. The motion of defendant Balboa Life and Casualty for sanctions [Docket No. 195] is GRANTED.
4. Plaintiff Joseph Dixon's motion for extension of time [Docket No. 201] is DENIED AS MOOT.
5. The motion of defendant Balboa Life and Casualty for summary judgment [Docket No. 203] is GRANTED.
6. Dixon's motion for summary judgment [Docket No. 211] is DENIED.

7. Dixon's motion for summary judgment [Docket No. 213] is DENIED.

8. Dixon's motion for order/judgment regarding returned court documents [Docket No. 224] is DENIED.

9. Dixon's complaint is DISMISSED WITH PREJUDICE AND ON THE MERITS.

10. Dixon is SANCTIONED as follows:

> Plaintiff Joseph Dixon, and anyone acting in concert or cooperation with, him is BARRED from filing any further lawsuits in this District unless either (1) the pleadings related to any such lawsuit are signed, pursuant to Fed. R. Civ. P. 11, by an attorney admitted to this Court, or (2) a judicial officer of this District has authorized in advance the filing of such pleadings.

11. The Clerk of Court is directed to refuse for filing any pleadings submitted by Dixon in connection with future lawsuits unless either (1) the pleadings related to any such lawsuit are signed, pursuant to Fed. R. Civ. P. 11, by an attorney admitted to this Court, or (2) a judicial officer of this District has authorized in advance the filing of such pleadings.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: September 3, 2008

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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REPORT AND RECOMMENDATION

* * * * * * * * * * * * * * * * * * * *

Joseph Dixon,

Plaintiff,

vs.

Deutsche Bank National Trust Co., Nationscredit Home Equity Loan Trust, Fairbanks Capital Corp., Balboa Life and Casualty, and Select Portfolio Servicing, Inc.,

Defendants.

Civ. No. 06-2858 (PJS/RLE)

* * * * * * * * * * * * * * * * * * *

I. Introduction

This matter came before the undersigned United States Magistrate Judge pursuant to a special assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(B), upon the Motions of Deutsche Bank National Trust Co., Nationscredit Home Equity Loan Trust, Select Portfolio Servicing, Inc., and Fairbanks Capital Corp. (collectively, the "Deutsche Bank Defendants"), for Sanctions and for Summary Judgment; the Motions of Balboa Insurance Company ("Balboa") for Sanctions, and for Summary Judgment; and the Motion for Extension to Time to File, by the Plaintiff Joseph Dixon ("Dixon"), his two (2) Motions for Summary Judgment, and his Motion for Order Regarding Court Documents.

A Hearing on the parties' Motions was conducted on February 12, 2008, at which time, Dixon appeared pro se; the Deutsche Bank Defendants appeared by Kristine M. Speigelberg,

Esq.; and Balboa appeared by Robert E. Salmon, Esq.

For reasons which follow, we recommend that the Deutsche Bank Defendants' Motion for Sanctions and Motion for Summary Judgment be granted; that Balboa's Motion for Sanctions and for Summary Judgment be granted; that Dixon's Motion for Extension of Time and Motion for Order Regarding Court Documents be denied, as moot; and that the Plaintiff's Motions for Summary Judgment be denied.

II. Factual and Procedural Background

In June of 1994, Dixon obtained a home equity loan in the amount of $31,000.00, from EquiCredit Corporation of Minnesota ("EquiCredit"), by executing and delivering a mortgage ("the Mortgage") to EquiCredit on Dixon's home in Minneapolis, Minnesota ("the Property"). See, Complaint, Exhibit A-4, at ¶5. In 2001, after several assignments, the Mortgage was assigned back to EquiCredit, andwas serviced by Select Portfolio Servicing, Inc. ("SPS"), which was formerly known as Fairbanks Capital Corp. ("Fairbanks"). Id.

On August 1, 2005, EquiCredit assigned its Mortgage to Deutsche Bank National Trust Co. ("Deutsche Bank"), as the Trustee for Nationscredit Home Equity Loan Trust ("Nationscredit"). Id. From his filing, it appears that Dixon defaulted on the Mortgage, and that Deutsche Bank, as the Trustee for Nationscredit, conducted a foreclosure of the Mortgage by Advertisement, pursuant to Minnesota Statutes Section 580.04, Subdivision 7. Id. at 35, 47; Exhibit A-4, at ¶7. Balboa issued insurance certificates to Dixon, under the master insurance policy issued to his mortgage servicer, and, after Dixon lost the Property through foreclosure, Balboa cancelled his certification of insurance. Id. at ¶27. As

a result of Dixon's default, the Property was sold at a foreclosure sale, which was conducted by the Hennepin County Sheriffs Office ("Sheriff's Office"), and the Property was purchased by AHR Construction, Inc. ("AHR"). Record of Sheriffs Foreclosure/Execution Sale, Complaint, Exhibit A-2. Neither the Sheriff's Office, nor AHR,[1] are named as parties in Dixon's current Complaint. The expiration date by which Dixon could redeem the Mortgage passed on July 5, 2006. Id.

On December 7, 2007, the Deutsche Bank Defendants filed a Motion for Sanctions against Dixon, see, Docket No. 183, and also filed a Motion for Summary Judgment. See, Docket No. 189. On December 7, 2007, Balboa also filed a Motion for Sanctions, see, Docket No. 195, and a Motion for Summary Judgment. See, Docket No. 203. On January 9, 2008, Dixon filed two (2) Motions for Summary Judgment, and he also asks the Court to reopen Default proceedings against the Defendants, and to impose Sanctions.[2] See, Docket Nos. 211 and

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[1] Dixon previously sued AHR in a separate action which was dismissed for lack of subject matter jurisdiction. See, Dixon v. Rodriquez, Civ. No. 06-597 (JNE/JJG), Order, Docket No. 8.

[2] On December 7, 2007, Dixon filed a Motion for Enlargement of Time to File various Motions, including a Motion for Summary Judgment. See, Docket No. 201. In that Motion, Dixon alleged that he had uncovered "concrete and substantial evidence" in support of his claim, and that establishes fraud by the Defendants, and he asks the Court for leave to file his Motion or Motions by January 1, 2008. As Dixon subsequently filed two (2) Motions for Summary Judgment, see, Docket Nos. 211 and 213, we recommend that this Motion for an extension of time be denied, as moot.

Dixon also filed a Motion for Order/Judgment Regarding Returned Court Documents, see, Docket No. 224, in which he alleges that counsel for the Deutsche Bank Defendants changed

213.

III. Discussion

A. The Deutsche Bank Defendants' and Balboa's Motions for Summary Judgment. The Deutsche Bank Defendants have filed a Motion for Summary Judgment, see, Docket No. 189, in which they argue that there are no genuine disputes of material fact as to the legality of the foreclosure on the Mortgage, and that Dixon's remaining claims against the Deutsche Bank Defendants are barred by the doctrine of res judicata, and/or collateral estoppel. Balboa has also moved for Summary Judgment on the basis of the doctrine of collateral estoppel, see, Docket No. 203, and additionally argues that Dixon's insurance claims fail as a matter of law. We address each Motion below.

1. Standard of Review. Summary Judgment is not an acceptable means of resolving triable issues, nor is it a disfavored procedural shortcut when there are no issues which require the

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her address without giving him prior notice, and he seeks sanctions as a result of this alleged negligence. However, counsel for the Deutsche Bank Defendants, Kristine M. Spiegelberg ("Spiegelberg"), has submitted an Affidavit, see, Docket No.221, in which she attests that Dixon was informed of her change of address by letter dated December 1, 2007, which was mailed to Dixon's post office box address in Minneapolis. Id. at Exhibit 1. In addition, we note that the Deutsche Bank Defendants' Motion for Summary Judgment, which was filed on December 7, 2007, also discloses Spiegelberg's new address. At most, it appears that Spiegelberg's letter of December 1, 2007, had not yet reached Dixon before he mailed documents to the Deutsche Bank Defendants on January 7, 2007. As a result, we have no responsible basis upon which to impose sanctions upon the Deutsche Bank Defendants, due to some alleged failure to provide Dixon with notice of their change of address, and therefore, we recommend that Dixon's Motion be denied.

unique proficiencies of a Jury in weighing the evidence, and in rendering credibility determinations. See, Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Midwest Oilseeds, Inc. v. Limagrain Genetics Corp., 387 F.3d 705, 711 (8th Cir. 2004), cert. denied, 544 U.S. 977 (2005). Summary Judgment is appropriate when we have viewed the facts, and the inferences drawn from those facts, in a light most favorable to the nonmoving party, and we have found no triable issue. See, Eide v. Grey Fox Technical Servs. Corp., 329 F.3d 600, 604 (8th Cir. 2003); Philip v. Ford Motor Co., 328 F.3d 1020, 1023 (8th Cir. 2003); United Fire & Casualty Co. v. Garvey, 328 F.3d 411, 413 (8th Cir. 2003). For these purposes, a disputed fact is "material" if it must inevitably be resolved and the resolution will determine the outcome of the case, while a dispute is "genuine" if the evidence is such that a reasonable Jury could return a Verdict for the nonmoving party. See, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Planned Parenthood of Minnesota/South Dakota v. Rounds, 372 F.3d 969, 972 (8th Cir. 1004); Fenney v. Dakota, Minnesota & Eastern R.R. Co., 327 F.3d 707, 711 (8th Cir. 2003).

As Rule 56(e) makes clear, once the moving party files a properly supported Motion, the burden shifts to the nonmoving party to demonstrate the existence of a genuine dispute. In sustaining that burden, "an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must -- by affidavits or as otherwise provided in this rule -- set out specific facts showing a genuine issue for trial." Rule 56(e), Federal Rules of Civil Procedure; see also, Anderson v. Liberty Lobby, Inc., supra at 256; Eddings v. City of Hot Springs, Ark., 323 F.3d 596, 602 (8th Cir. 2003).

Moreover, the movant is entitled to Summary Judgment where the nonmoving party has failed "to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, supra at 322; see also, Forest Park II v. Hadley, 408 F.3d 1052, 1057 (8th Cir. 2005); Mercer v. City of Cedar Rapids, 308 F.3d 840, 843 (8th Cir. 2002); Hammond v. Northland Counseling Center, Inc., 218 F.3d 886, 891 (8th Cir. 2000). No genuine issue of fact exists in such a case because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." Celotex Corp. v. Catrett, supra at 323; see also, Sallis v. University of Minnesota, 408 F.3d 470, 474 (8th Cir. 2005); Davis v. U.S. Bancorp, 383 F.3d 761, 768 (8th Cir. 2004); Bell Lumber and Pole Co. v. United States Fire Ins. Co., 60 F.3d 437, 441 (8th Cir. 1995).

2. Legal Analysis. Dixon's Complaint consists of twenty-eight (28) typewritten pages, which include a variety of allegations of wrong-doing, but which does not contain distinct Counts or, for the most part, specific allegations against the separate Defendants. Both the Deutsche Bank Defendants, and Balboa, argue that the majority of the claims, that are asserted by Dixon, are barred by the doctrine of res judicata, and/or collateral estoppel, and that the remaining claims should be subject to Summary Judgment on their merits. Specifically, the Deutsche Bank Defendants ask the Court to grant Summary Judgment as to Dixon's claims that arise out of the foreclosure proceedings on the Property, and Balboa argues that Dixon has failed to state a claim, as to any alleged insurance-related violation. We begin our analysis with the Defendants' Motions for Summary

Judgment on the merits of the foreclosure and insurance claims, and then proceed to the collateral estoppel effect of prior Court proceedings, as to the remaining claims in the Complaint.

a. The Foreclosure of Dixon's Mortgage. In his Complaint, supra at 144, 47, 48, 50, Dixon alleges that the foreclosure of the Mortgage was illegal, because it occurred without the proper notice. The Deutsche Bank Defendants argue that we should grant Summary Judgment as to that issue for, on the Record before us, there is no genuine dispute of material fact as to the legality of that foreclosure.

The Deutsche Bank Defendants argue that the requirements of Minnesota Statutes Section 580.02 were satisfied in foreclosing on the Mortgage, which contained a power of sale clause after default. See, Minnesota Statutes Section 580.02. Section 580.02 provides that, following a default by the mortgager, a mortgage can be foreclosed, by advertisement, as long as no proceeding has been instituted at law to collect the debt, and the mortgage has been recorded or, if the property is on registered land, the mortgage has been registered. The Deutsche Bank Defendants have submitted evidence that Dixon defaulted on the Mortgage, that the Mortgage was recorded, and that there has been no action to recover the debt from Dixon, see, Affidavit of Kristine M. Spiegelberg ("Spiegelberg"), Docket No. 221, at ¶6 and Exhibit D3, and, although Dixon has submitted a remarkable number of documents in support of his position, we have not found any document that would challenge the competence of the Deutsche Bank Defendants' evidence, or establish a genuine fact dispute on this issue.

Furthermore, the Deutsche Bank Defendants allege that they satisfied the Notice requirement,

which is required by Minnesota Statutes Section 580.03, since the notice of mortgage foreclosure sale was achieved by six (6) weeks of published notice.[3] In addition to the requirement that Notice be published, Section 580.03 provides that, "at least four weeks before the appointed time of sale a copy of [the foreclosure] notice shall be served in like manner as a summons in a civil action in the district court upon the person in possession of the mortgaged premises, if the same are actually occupied." Dixon argues that, in violation of Section 580.03, he was not served with a Summons and Complaint prior to the foreclosure. See, Plaintiff's Memorandum of Opposition, Docket No. 225, at p. 12. However, Section 580.03 only requires service if a property is occupied, and the Deutsche Bank Defendants have submitted evidence that personal service of the foreclosure notice was attempted, but the Property was found to be vacant. See, Affidavit of Spiegelberg, supra at Exhibit D1; Plaintiff's Motion and Exhibits, Docket No. 211, "Affidavit of Vacancy," at Exhibits 105-06; 114; 184-85; 206-07.

Finally, the Deutsche Bank Defendants note that Minnesota Statutes Section 580.19 provides as follows:

> Every sheriff's certificate of sale made under a power to sell contained in a mortgage shall be prima facie evidence that all the requirements of law in that behalf

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[3] The Deutsche Bank Defendants have also submitted evidence, that is uncontested by Dixon, that the published Notice complied with Minnesota Statutes Section 580.04, which establishes specific guidelines regarding the information to be contained in a Notice of foreclosure. See, Affidavit of Kristine M. Spiegelberg, Docket No. 192, at Exhibit D1.

> have been complied with, and prima facie evidence of title in fee thereunder in the purchaser at such sale, the purchaser's heirs or assigns, after the time for redemption therefrom has expired.

Minnesota Statutes Section 580.19.

Here, the Deutsche Bank Defendants have submitted a certificate from the Sheriff's Office, see, Affidavit of Spiegelberg, supra at Exhibit D1, that includes a Certificate of Sale, which establishes a prima facie case that the foreclosure was lawful. Dixon has not submitted any competent evidence to rebut the Certificate of Sale, which would establish that the foreclosure of the Property was unlawful.[4] Moreover, the Minnesota Supreme Court has held that State law precludes a collateral attack of a foreclosure sale. See, Prior Lake State Bank v. Mahoney, 216 N.W.2d 681, 682 (Minn. 1974); see also, Fidelity & Deposit Co. of Maryland v. Riopelle, 216 N.W.2d 674, 678 (Minn. 1974)("[A] certificate of sale on execution which is valid on its face cannot be attacked in a proceeding subsequent to initial registration.").

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[4] At the Hearing, Dixon stated that, in opposition to the Defendants' Motions, and in support of his own Motions for Summary Judgment, he had submitted evidence from the Federal Trade Commission ("FTC") which established that the foreclosure of his property was undertaken illegally. We have closely examined the considerable filings that Dixon has submitted, and we have found no such evidence. It is possible that Dixon is referring to a Settlement Agreement and Release, that the FTC negotiated between the members of a putative class action, and Fairbanks. See, Plaintiff's Exhibits, Docket No. 217, at Exhibit 957-1006. However, the Settlement Agreement explicitly settles "all issues and claims that have, or could have, been brought against Fairbanks or others by Plaintiffs or any Settlement Class Member," id. at Exhibit 961, and, at any rate, has no relevance to the issue currently before the Court.

In short, while Dixon contests the legality of the foreclosure sale, he has not proffered any competent evidence which would create a genuine issue of material fact, and we recommend that the Deutsche Bank Defendants' Motion for Summary Judgment be granted as to that claim.[5]

b. The Insurance Claims. In his Complaint, Dixon alleges that he never authorized Fairbanks to place insurance on the Property, nor asked Balboa to issue such a policy, and claims that he was asked to pay excessively high insurance premiums -- purportedly over $9,000,000.00 over a two (2) year period -- because of his race. See, Complaint, supra at 22-33. In addition, Dixon alleges that Balboa failed to pay him on a property damage claim. Id at ¶27. Balboa argues that Dixon's insurance claims should be subject to Summary Judgment.[6]

Dixon first claims that Balboa unlawfully

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[5] Balboa argues that Summary Judgment as to any foreclosure-related claims, which Dixon seeks to allege against it, is appropriate, as Dixon has not pled any facts that would establish that Balboa was involved in that foreclosure. In addition, Balboa has submitted an Affidavit, which attests it was not involved in the foreclosure proceedings. See, Affidavit of Larry Willeford, Docket No. 207, at ¶15; Affidavit of John F. Meadows, Docket No. 25, at ¶14. Given these uncontroverted showings, we agree that there is no genuine fact question, concerning Balboa's lack of involvement in the foreclosure proceedings, and find that, to the extent that Dixon seeks to allege claims as to Balboa, which arise out of the foreclosure of the Property, Summary Judgment is also appropriate.

[6] The Deutsche Bank Defendants have not moved for Summary Judgment on the merits of Dixon's insurance claims, and therefore, we address Dixon's insurance claims, as to the Deutsche Bank Defendants, subsequently, when we analyze the application of the doctrine of res judicata.

issued an insurance policy to Fairbanks, without obtaining his permission, as the owner of the Property. See, Complaint, supra at 24, 36. In response, Balboa has submitted a copy of the Mortgage, which was signed by Dixon on June 24, 1994, and which explicitly authorizes the lender, or servicer, to purchase insurance on the Property when the borrower fails to do so.[7] See, Affidavit of Robert E. Salmon ("Salmon"), Docket No. 206, at Exhibit A, ¶5. Pursuant to that clause, EquiCredit apparently obtained lender-placed insurance in 2001, which expired on November 8, 2001, at which time, EquiCredit arranged for Balboa to issue a Certificate of Insurance on the Property. Id. at Exhibit E, at B001-04.

The letter from EquiCredit to Dixon explained that the premium for the lender-placed insurance coverage, during the period from November 8, 2001, through November 8, 2002, would be approximately $158.00, informed Dixon that the insurance differed from a home owner's policy, as it was more expensive, had a higher deductible, and did not protect the homeowner against any loss of personal property, and requested that Dixon obtain insurance from a company of his own choice, at which time, EquiCredit would cancel the Balboa policy. Id. By letter dated November 13, 2001, EquiCredit confirmed that it had obtained insurance coverage for the Property from

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[7] The Mortgage provides that the borrower "shall keep the improvements now existing or hereafter erected on the Property insured against loss * * * in such amounts and for such periods as Lender may require," and further provides that, in the event that the borrower fails to maintain such insurance, "Lender may, in its sole discretion, obtain such insurance naming Lender as the sole beneficiary." Affidavit of Robert E. Salmon, Docket No. 206, at Exhibit A, ¶5.

Balboa, and that the premium for one (1) year of coverage would be $157.00. Id. at B005-08.

Starting with a letter dated October 10, 2002, Fairbanks assumed the correspondence with Dixon, concerning his continuing obligation, under the Mortgage, to obtain insurance coverage, and advised him that, if he failed to produce proof of such insurance, the current policy would be renewed, id. at B009, and, in a letter dated November 15, 2002, confirmed that the existing insurance policy had, in fact, been renewed. Id. at B010. A similar series of letters were sent in October and November of 2003, id. at B011-13, in October and November of2004, id. at B014-17, and in October and November of 2005. Id. at B018-21. By letter dated January 19, 2006, Fairbanks/SPS informed Dixon that it had cancelled the insurance policy, effective January 18, 2006, as the policy was paid off, id. at B022, following the foreclosure sale of the Property to AHR on January 6, 2006. See, Complaint, supra at Exhibit A-4, at ¶6. On this Record, we find no factual dispute concerning the ability of Balboa to issue insurance on the Property.

Next, Dixon claims that Balboa required him to pay excessively high insurance premiums, totaling a sum of $9,000,000.00 over a two (2) year period, based upon his race.[8] See, Plaintiff's Exhibits to

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[8] Although the basis for Dixon's claim, that he was charged the sum of $9,000,000.00 for insurance coverage, is unclear, it appears that the insurance coverage, that the various lenders obtained from Balboa for the Property, was included in a master policy that was issued by Balboa to EquiCredit for lender-placed insurance coverage, and that the cancelled checks, which were produced by Balboa during discovery, on which Dixon bases his computation, reflect payments on that master policy. See, Balboa's Memorandum, Docket No. 205, at p. 5; Affidavit of Robert E. Salmon, Docket No. 206, at Exhibits B-D; Plaintiff's Exhibits, Docket No. 3, Exhibit B-3, at pp. 3, 39-89.

Complaint, supra at Exhibit B3. In response, Balboa has submitted evidence that the annual premiums charged for the Property, over the course of its coverage, ranged from $157.00-$203.00. See, Affidavit of John F. Meadows ("Meadows"), Docket No. 25, at ¶12; Affidavit of Salmon, supra at Exhibit E, at B001-021. In addition, Balboa underscores that Dixon has failed to produce any evidence that would support his claim that Balboa took his race, color, or national origin, into consideration in setting the premium that it charged Dixon for the policy. See, Affidavit of Salmon, Exhibit F, at p. 1.

Construing Dixon's argument generously, it appears that he believes that a handwritten note by a process server, which is dated November 8, 2005, and which states "Windows busted all over upper & lower unit's [sic] * * * very bad area, etc -Dixon long gone," Affidavit of Salmon, supra at Exhibit G, at p. 2, supports his claim that the premiums, which were charged by Balboa, were racially motivated. See also, id. at Exhibit F at page 13. However, as Balboa accurately notes, only one (1) certificate of insurance was issued after the date of the process server's notation, and the premium that was charged for that annual renewal was actually lower than several of the earlier premiums. See, Affidavit of Salmon, supra at Exhibit E, at B001-21. Moreover, the noted comment has no direct connection to race, color, or national origin, and conclusory allegations are insufficient to defeat a claim for Summary Judgment. See, Wegner v. City of Ladue, 500 F.3d 710, 728 (8th Cir. 2007), citing Robinette v. Jones, 476 F.3d 585, 591 (8th Cir. 2007).

Finally, Dixon alleges that Balboa failed to pay out on a property damage claim that related to vandalism at the Property. In response, Balboa

argues that it never received a claim from Dixon, or from any other person or entity, with respect to the Property, see, Affidavit of Larry Willeford, Docket No. 207, ¶15; Affidavit of Meadows, supra at ¶11, and that no evidence, in this Record, supports Dixon's contention that a claim on the insurance policy was ever made. See, Affidavit of Salmon, supra at Exhibit F, at 4-5; 10-16, 25; Exhibit H, at 18-19. The basis for Dixon's claim, again, appears to be the note that was made on November 8, 2005, by the process server, who observed that the windows on the Property were broken. See, Affidavit of Salmon, supra at Exhibit G, at p. 2.

Based upon that document, Dixon argues that the property was vandalized, and that "Balboa charged [a] premium but failed to pay to Plaintiff property damage claim." Complaint, supra at ¶27. However, the Policy, which has been submitted by Balboa, provides that a claim must be made immediately after a loss, followed within sixty (60) days by a written statement detailing the nature of the loss. See, e.g., Affidavit of Salmon, supra at Exhibit B, at B034. We find no disputed facts here, as Balboa's assertion, that it never received a claim for the Property, has not been refuted by any evidence that Balboa received notice that the Property was vandalized, or that it wrongfully refused to pay out on the Policy, and therefore, Summary Judgment on that claim is appropriate.

c. Res Judicata and Collateral Estoppel. The Deutsche Bank Defendants, and Balboa, both argue that Dixon is barred from bringing the remaining claims in his Complaint by the doctrines of res judicata and collateral estoppel. Specifically, the Defendants contend that, in Dixon v. Fairbanks, and Dixon v. EquiCredit, supra, Dixon brought identical

claims for civil and criminal conspiracy, discrimination, civil rights violations, fraud, and deceptive trade practices, and that those claims, as contained in his current Complaint, are collaterally estopped. Moreover, the Deutsche Bank Defendants maintain that the allegations in the Complaint, as to their involvement in insurance fraud, are barred by the doctrine of res judicata, as are Dixon's claims for equity skimming, and equity stripping.

i. Standard of Review. As the previous decisions, which the Defendants argue collaterally estop the present action, were decided by a Court in this District, pursuant to Federal law, Federal res judicata principles govern. See, Heck v. Humphrey, 512 U.S. 477, 488 n. 9 (1994); Canady v. Allstate Ins. Co., 282 F.3d 1005, 1014 (8th Cir. 2002)("[I]t is fundamental that the res judicata effect of the first forum's judgment is governed by the first forum's law, not by the law of the second forum."), quoting Hillary v. Trans World Airlines, Inc., 123 F.3d 1041, 1043 (8th Cir. 1997); Poe v. John Deere Co., 695 F.2d 1103, 1105 (8th Cir. 1982). "'Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" Gurley v. Hunt, 287 F.3d 728, 731(8th Cir. 2002), quoting Allen v. McCurry, 449 U.S. 90, 94 (1980).

"The test applied to determine whether res judicata bars litigation of a claim is: (1) whether the prior judgment was rendered by a court of competent jurisdiction; (2) whether the judgment was a final judgment on the merits, and (3) whether the same cause of action and same parties or their privies were involved in both cases." Id., citing De Llano v. Berglund, 183 F.3d 780, 781 (8th Cir. 1999); see also,

Leonard v. Southwestern Bell Corp. Disability Income Plan, 341 F.3d 696, 701 (8th Cir. 2003); Canady v. Allstate Ins. Co., supra at 1014; Black Clawson Co., Inc. v. Kroenert Corp., 245 F.3d 759, 762 (8th Cir. 2001); Lundquist v. Rice Memorial Hosp., 238 F.3d 975, 977 (8th Cir. 2001). "Final judgment on the merits precludes the relitigation of a claim on any grounds raised before or on any grounds which could have been raised in the prior action," and a plaintiff cannot assert a claim on a theory of recovery when the same claim has already been rejected by a Court based upon another theory. Poe v. John Deere Co., supra at 1105 (citing cases).

To determine if a plaintiff has stated distinct claims, we look to "whether or not proof of the same facts will support both actions, or to whether the wrong for which redress is sought is the same in both actions," and examine the claims to see whether they arise out of a common nucleus of operative facts. Id. at 1106, citing Woodbury v. Porter, 158 F.2d 194, 195 (8th Cir. 1946); United States v. Gurley, 43 F.3d 1188, 1195 (8th Cir. 1994), cert. denied, 516 U.S. 817 (1995). In addition, we look to see "'whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations.'" United States v. Gurley, supra at 1196, quoting Lane v. Peterson, 899 F.2d 737, 741 (8th Cir. 1990).

We also apply Federal law to determine if the doctrine of collateral estoppel applies. See, Canady v. Allstate Ins. Co., supra at 1016; see also, Jaramillo v. Burkhart, 999 F.2d 1241, 1245 (8th Cir. 1993). "Collateral estoppel is appropriate when: (1) the issue sought to be precluded is identical to the issue previously decided; (2) the prior action resulted in a

final adjudication on the merits; (3) the party sought to be estopped was either a party or in privity with a party to the prior action; and (4) the party sought to be estopped was given a full and fair opportunity to be heard on the issue in the prior action." Id., citing Wellons, Inc. v. T.E. Ibberson Co., 869 F.2d 1166, 1168 (8th Cir. 1989). Under Federal law, there is no requirement that both parties be bound by the prior Judgment, and a party may now "'rely on collateral estoppel even though he or she is not bound by the prior judgment if the party against whom it is used had a full and fair opportunity and incentive to litigate the issue in the prior action.'" Banks v. International Union Electronic, Electrical, Technical, Salaried and Machine Workers, 390 F.3d 1049, 1054 (8th Cir. 2004), quoting Lane v. Peterson, supra at 741.

The Supreme Court has clarified that collateral estoppel can be used either offensively by a plaintiff, who is seeking to bar a defendant from litigating an issue that the defendant previously litigated against a different party, or defensively by a defendant, who seeks to prevent a plaintiff from asserting a claim that he has previously asserted, and lost, against another defendant. See, Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n. 4 (1979). The defensive use of collateral estoppel, in particular, promotes judicial economy, as it "precludes a plaintiff from relitigating identical issues by merely 'switching adversaries.'" Id. at 330, citing Bernhard v. Bank of Am. Nat. Trust & Savings Ass'n, 122 P.2d 892, 895 (Calif. 1942).

ii. Collateral Estoppel. In 2001, Dixon filed a Complaint in this Court, against EquiCredit and Bank of America, in which he alleged violations of the Racketeer Influenced and Corrupt

Organizations Act, the Minnesota Deceptive Trade Practices Act, and various Constitutional violations, and additionally, claimed that the defendants violated his civil rights and discriminated against him. See, Dixon v. EquiCredit, supra at Docket No. 1. There, the Court noted that, although Dixon's claims were nearly indecipherable, they arose from the Mortgage that Dixon obtained from EquiCredit on June 24, 1994, and that it was undisputed that Dixon had defaulted on that loan. See, Dixon v. EquiCredit, Order, Docket No. 71. By Order dated June 3, 2002, the Court granted EquiCredit and Bank of America's Motion for Summary Judgment, and that decision was subsequently affirmed by our Court of Appeals. See, Dixon v. EquiCredit Corp., 82 Fed.Appx. 501 (8th Cir. 2003), cert. denied, 541 U.S. 1083 (2004), rehearing denied, 542 U.S. 958 (2004).

In April of 2003, Dixon filed a second Complaint, in this District, against Fairbanks, in which he alleged a variety of claims, including: various civil rights violations; discrimination based upon race, color, national origin, and disability; housing discrimination; violations of the Sixth, Thirteenth, and Fourteenth Amendments to the United States Constitution; criminal conspiracy; violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"); extortion; fraud; and deceptive practices. See, Dixon v. Fairbanks Capital Corp., supra, Report and Recommendation, Docket No. 77, at pp. 2-3. The Report of the Magistrate Judge, there, which recommended the dismissal of Dixon's claims against Fairbanks on collateral estoppel grounds, was adopted by the District Court, and our Court of Appeals later affirmed the dismissal of Dixon's claims. See, Dixon v. Fairbanks Capital Corp., 126 Fed.Appx. 338, 338-39 (8th Cir. 2005),

cert. denied, 546 U.S. 1000 (2005)("Although we agree with Dixon that the instant complaint involves different foreclosure proceedings than did the prior litigation between Dixon and [Fairbanks'] predecessor, we nevertheless conclude that summary judgment was warranted.").

The Defendants argue that the issues, which are raised by Dixon, here, are identical to those which were previously litigated in his previous lawsuits relating to the Mortgage. As we have previously detailed, here, Dixon alleges claims of civil and criminal conspiracy, discrimination, civil rights violations, fraud, and deceptive trade practices, and each of those claims was previously raised in Dixon v. EquiCredit and Dixon v. Fairbanks. The first prong of the test for collateral estoppel requires us to determine whether the issue, that is sought to be precluded, is identical to the issue that was previously decided. Among the voluminous submissions that Dixon has proffered to the Court, he has included the Complaints that were filed in the two (2) previous actions. Having examined those Complaints, and compared them to his current Complaint, and having reviewed the Orders of the District Court, which granted Summary Judgment in those earlier cases, we find that Dixon is attempting to litigate the exact same claims that have already been resolved by those prior Court rulings. See, Docket No. 211, Complaint (Dixon v. Fairbanks), at Exhibits 264-285; id., Complaint (Dixon v. EquiCredit), at Exhibits 306-25.[9]

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[9] In fact, in his present Complaint, Dixon apparently acknowledges that he has previously raised those issues, as he states that the "Plaintiff, Joseph Dixon, in this instant lawsuit and others" has alleged that Fairbanks engaged in wrongdoing, and additionally attempts to raise claims against the City of

The next prong of the test for collateral estoppel is whether the prior actions resulted in a final adjudication on the merits. In both Dixon v. EquiCredit, and Dixon v. Fairbanks, the Court granted Summary Judgment, on the merits, in favor of the respective defendants, and dismissed all of Dixon's claims. See, Dixon v. EquiCredit, Civ. No. 01-1091 (PAM/SRN), Order, Docket No. 71; Dixon v. Fairbanks, Civ. No. 03-2943 (DWF/FLN), Report and Recommendation, Docket No. 77; id., Order, Docket No. 81; Dixon v. Fairbanks Capital Corp., 126 Fed.Appx. 338, 339 (8th Cir. 2005), cert. denied, 546 U.S. 1000 (2005). As "[i]t is well established that summary judgment is a final judgment on the merits for purposes of res judicata," Dicken v. Ashcroft, 972 F.2d 213, 233 n.5 (8th Cir. 1992), we find that this second prong is satisfied.[10] See also, Hufsmith v. Weaver, 817 F.2d 455, 461 (8th Cir. 1987)(same).

Similarly, there is no question that the privity requirement is met, as Dixon is both the Plaintiff, here, and in the two (2) prior pieces of litigations and, for collateral estoppel, only the party to be estopped need be in privity with a party to the prior action. See, Canady v. Allstate Ins. Co., supra at 1016. While Dixon may think it unfair that he is precluded from

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Minneapolis, and the Social Security Administration, that were previously subject to summary adjudication. See, Complaint, Docket No. 1, at 16-22 ; Dixon v. City of Minneapolis, Civ. No. 02-4773 (RHK/AJB), Order, Docket No. 40 (granting Summary Judgment to defendants); Dixon v. Social Security Administration, Civ. No. 05-601 (DSD/SRN), Order, Docket No. 57 (same).

[10] The United States Supreme Court has noted that Courts may properly use the term "res judicata" to describe both claim preclusion and issue preclusion. See, Baker by Thomas v. General Motors Corp., 522 U.S. 222, 233 n. 5 (1998)

litigating the same issues that he previously litigated, while the Defendants might not be so precluded, the wisdom of collateral estoppel's application, under such circumstances, has been long recognized by the United States Supreme Court. As the Court explained, in Parklane Hosiery Co., Inc. v. Shore, supra at 328, quoting Kerotest Mfg. Co. v. C-O-Two Co., 342 U.S. 180, 185 (1952):

> Permitting repeated litigation of the same issue as long as the supply of unrelated defendants holds out reflects either the aura of the gaming table or "a lack of discipline and disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure."

As apropos here, "[b]y 'preclud[ing] parties from contesting matters that they have had a full and fair opportunity to litigate,' these two doctrines [i.e., issue and claim preclusion] protect against 'the expense and vexation attending multiple lawsuits, conserv[e] judicial resources, and foste[r] reliance on judicial action by minimizing the possibility of inconsistent decisions.'" Taylor v. Sturgell, — U.S. ---, 128 S.Ct. 2161, 2172 (2008), quoting Montana v. United States, 440 U.S. 147, 153-54 (1979). Accordingly, the Defendants have satisfied this prong of the collateral estoppel test.

Finally, the Defendants argue that Dixon received a full and fair opportunity to be heard in his prior litigated cases, as both were decided on the merits, by Summary Judgment, following extensive pleading, discovery, and Motion practice. In addition, both cases were affirmed by our Court of Appeals. See, Dixon v. EquiCredit, supra at Docket No. 82;

Dixon v. Fairbanks, supra at Docket No. 89. In sum, finding that all of the elements of collateral estoppel apply, we recommend that the Defendants' Motions for Summary Judgment be granted, as to Dixon's claims against them for civil and criminal conspiracy, discrimination, civil rights violations, fraud, and deceptive trade practices.

iii. Res Judicata. As previously noted, Dixon also alleges that the Deutsche Bank Defendants wrongfully obtained insurance coverage without his permission, and that they engaged in equity skimming and/or equity stripping.

In his Complaint, Dixon asserts that the Deutsche Bank Defendants unlawfully obtained insurance coverage on the Property without his permission. See, Complaint, supra at 22-29. In applying the test for res judicata, or claim preclusion, as with collateral estoppel, we look to determine whether there was a final Judgment on the merits, by a Court of competent jurisdiction, and whether the same cause of action, and same parties, or their privities, were involved in both cases. See, Gurley v. Hunt, supra at 731. Here, we have already determined that the District Court's prior decisions, in Dixon v. EquiCredit, and Dixon v. Fairbanks, resulted in final Judgments, which were affirmed by our Court of Appeals. Therefore, we turn our attention to whether Dixon's claims, here, as well as those in the previous cases, arose out of a common nucleus of operative facts, and whether the Deutsche Bank Defendants are in privity with those earlier defendants.

As to the first issue, we have no hesitation in finding that the claims, here, are supported by the same facts as those that were alleged in Dixon v. EquiCredit, and Dixon v. Fairbanks. In a

Recommendation in Dixon v. Fairbanks, dated September 22, 2004, see, Docket No. 77, at p. 3, that was adopted by the District Court, see, Docket No. 81, the Magistrate Judge noted that, as is the case here, the foreclosure of the Property had given rise to the Plaintiff's Complaints in both Dixon v. EquiCredit, and Dixon v. Fairbanks. Moreover, in Dixon v. EquiCredit, supra at Exhibit 312, Dixon claimed that EquiCredit "conspired with [an unnamed] insurance company," and in Dixon v. Fairbanks, Dixon specifically asserted a claim of insurance discrimination as to Fairbanks.[11] See, Complaint, supra at Exhibit 272, at 129-42.

The only remaining issue is whether the parties, here, are in privity with the parties that were involved in the prior cases. As we noted, the District Court has previously awarded Summary Judgment, as to Fairbanks, on Dixon's claim of insurance redlining, and other insurance-related claims in relation to the Property, and thus, Dixon is estopped from asserting any insurance claims as to Fairbanks. In 2004, Fairbanks changed its name to SPS, and, as a successor-in-interest, SPS holds the same, successive rights as Fairbanks had, and therefore, SPS is in privity with Fairbanks in the prior litigation. See, Answer, Docket No. 16, at p. 1; Order, Docket No. 182, at p. 2; see also, Lawlor v. Nat'l Screen Service Corp., 349 U.S. 322, 329 n. 19 (1955)(recognizing the "orthodox categories of privies" as including "'those who control an action although not parties to it ***; those whose interests are represented by a party to the action ***; successors in

[11] Moreover, the Complaint in Dixon v. Fairbanks was filed in April of 2003, which is at least two (2) years after EquiCredit initially obtained lender-placed insurance on the Property. See, Affidavit of Salmon, supra at Exhibit E, at B001-01.

interest'"), quoting Restatement, Judgments, Section 83, Comment a; cf., Margo-Kraft Distributors, Inc. v. Minneapolis Gas Co., 200 N.W.2d 45, 47-48 (Minn. 1972)("Those in privity would include, according to the Restatement, 'those who control an action although not parties to it ***; those whose interests are represented by a party to the action ***; successors in interest to those having derivative claims ***.'"), quoting Restatement, Judgments, Section 83, Comment a; State of Minnesota v. Joseph, 636 N.W.2d 322, 327 n. 2 (Minn. 2001)(same).

Moreover, according to Dixon's own submissions to the Court, in August of 2005, SPS, as attorney-in-fact for EquiCredit, assigned its interest in the Mortgage to Deutsche Bank, as trustee for Nationscredit. See, Complaint, Exhibit A-4, at ¶5; Affidavit of Spiegelberg, supra at Exhibit D4. As noted, parties in privity include "successors in interest to those having derivative claims," Margo-Craft Distributors, Inc. v. Minneapolis Gas Co., supra at 47-48, quoting McMenomy v. Ryden, 184 N.W.2d 804, 807 (Minn. 1967), which, here, includes each of the Deutsche Bank Defendants. See also, McLaughlin v. Minnesota Loan & Trust Co., 255 N.W. 839, 841 (Minn. 1934)("At law a trustee is regarded as owner of the trust property with 'all the rights and subject to all the liabilities of ownership.'"), quoting Wahl v. Kellner, 138 N.E. 604 (Ill. 1923).

Moreover, in the prior litigation, Fairbanks/SPS had a motive that is identical to that driving Deutsche Bank, and Nationscredit, to vigorously defend against Dixon's claims; namely, to uphold the validity of the Mortgage, including the provision in the Mortgage that allowed Fairbanks/SPS to obtain insurance on the Property, absent proof by Dixon that he had secured private insurance. Since we find that

the Deutsche Bank Defendants were parties, or were in privity with parties, in the prior relevant cases, we find that Dixon's insurance-related claims are barred by the doctrine of res judicata, and therefore, the Deutsche Bank Defendants' Motion for Summary Judgment, as to those claims, should be granted.

In considering the Defendants' argument, that the equity skimming, and equity stripping claims, are barred by res judicata, see, Complaint, supra at 3, 22, the privity argument remains unchanged from our discussion of the insurance issues, and we need only consider the last prong of the test for res judicata, concerning the nature of the claims that were previously litigated.[12] Although the equity stripping, and equity skimming claims, were not included in any of Dixon's previous Complaints, that were filed by him, we find that those claims also arise out of the same facts, as those that were the subject of Dixon's prior cases that related to the Property, and therefore, they are also barred by res judicata.

Although Dixon has not clarified his claims, which allege equity skimming and equity stripping, they appear to arise out of his belief that the Deutsche Bank Defendants unlawfully foreclosed on the Property, and we have already found that Summary Judgment, in favor of the Defendants, is appropriate as that issue. The Property was not

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[12] Title 12 U.S.C. Section 1709-2 creates criminal liability for individuals who act with intent to defraud by equity skimming, or by purchasing one- to four-family dwellings, which are subject to a loan that is in default, and deliberately failing to make mortgage payments, while collecting rent for their own benefit. Equity stripping is a cause of action, which is based upon State law, and concerns the proper procedure to be employed by a foreclosure consultant. See, Minnesota Statutes Section 325N.04.

finally auctioned, during the course of the foreclosure proceedings, until January of 2006, and Dixon filed his Complaint, in Dixon v. Fairbanks, in April of 2003. However, in United States v. Gurley, supra at 1196, our Court of Appeals found that res judicata was appropriate, even when the previous litigation had been brought for events that took place in the 1970s, and the current litigation concerned events that took place in the 1980s. As the Court noted, "new evidence of injury differs from a new wrong," id., quoting Supporters to Oppose Pollution, Inc. v. Heritage Group, 973 F.2d 1320, 1326 (7th Cir. 1992), and "[i]n the final analysis, the test would seem to be whether **the wrong for which redress is sought** is the same in both actions." Id., quoting Roach v. Teamsters Local Union No. 688, 595 F.2d 446, 449 (8th Cir. 1979)[adding emphasis], quoting in turn, Woodbury v. Porter, 158 F.2d 194, 195 (8th Cir. 1964).

Dixon commenced his lawsuit against EquiCredit, as well as his subsequent lawsuit against Fairbanks, based upon his claim that the Mortgage on the Property was being fraudulently mishandled, and he sought a Judgment from the Court that the foreclosure proceedings be abandoned. Here, Dixon seeks the same relief, arising from the same set of circumstances, with the only appreciable difference being the passage of several years, during which time, the final foreclosure sale of the Property had taken place, and the right to redemption had expired. As the wrong for which Dixon seeks redress is the same as in the prior cases, and the rest of the elements of res judicata have been satisfied, as to Dixon's claims of equity stripping, or equity skimming, by the Deutsche Bank Defendants, we recommend that their Motion for Summary

Judgment be granted, in its entirety.

B. The Motions of the Deutsche Bank Defendants, and Balboa, for Sanctions. The Deutsche Bank Defendants have filed a Motion for Sanctions against Dixon, see, Docket No. 183, and Balboa has filed a related Motion for Sanctions. See, Docket No. 195. Both Motions request the same relief: namely, that, pursuant to Rule 11, Federal Rules of Civil Procedure, Dixon should be barred, as a frivolous litigant, from filing any further pro se lawsuits in this Court, against any of the named Defendants, or their successors, regarding any facts alleged in the Complaint, here, without payment of a filing fee.

In 2001, Dixon brought suit against EquiCredit, and Bank of America, alleging a variety of Federal and State claims that arose from the Mortgage. See, Dixon v. EquiCredit Corp., supra, Order, Docket No. 71. There, after granting the defendants' Motion for Summary Judgment, the Court imposed a sanction of $500.00 on Dixon for "frivolous and excessive" filings. Id. Dixon appealed that decision, and our Court of Appeals affirmed both the dismissal, and the appropriateness of the sanction. See, Dixon v. EquiCredit Corp., 82 Fed.Appx. 501 (8th Cir. 2003), cert. denied, 541 U.S. 1083 (2004), rehearing denied, 542 U.S. 958 (2004).

Again as noted, in that same year, Dixon commenced a lawsuit against Fairbanks, as the successor in interest to the Mortgage for which EquiCredit was the previous servicer, asserting a number of Federal and State claims that arose from the foreclosing of the Property. See, Dixon v. Fairbanks Capital Corp., supra, Report and Recommendation, Docket No. 77; Order, Docket No. 81. As in Dixon v. EquiCredit, the Court, in Dixon v. Fairbanks, found that Summary Judgment for the

defendant was appropriate, id., and our Court of Appeals affirmed that decision. See, Dixon v. Fairbanks Capital Corp., 126 Fed.Appx. 338 (8th Cir. 2005).

More recently, by Order dated October 13, 2006, the District Court, the Honorable Paul A. Magnuson presiding, granted sanctions against Dixon in the form of a permanent injunction which bars him from filing any lawsuits in this District, based upon the facts that were asserted in that case, which was brought against the City of Minneapolis, and Fairbanks, among other defendants, and arose out of the condemnation of his home. See, Dixon v. R.T. Rybak, Civ. No. 06-2579 (PAM/JSM), Docket No. 12, at pp. 4-6.[13]

Rule 11, Federal Rules of Civil Procedure, requires that submissions to the Court be signed by the filing party as an attestation that the filing "is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation," and further attesting, that "the claims, defenses, and other legal contentions are warranted by existing law or by a

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[13] In Dixon v. Rybak, Civ. No. 06-2579 (PAM/JSM), Docket No. 12, at pp. 6-7, the Court barred Dixon from "filing any lawsuits in this or in any other court located in the state of Minnesota, against Defendant in this action or regarding the facts in the Complaint, without payment of the filing fee and the signature of an attorney admitted to this Court or prior leave of an appointed judicial officer of the state or federal courts of Minnesota."

Moreover, the United States Supreme Court, finding that Dixon "has repeatedly abused this Court process," has also recently taken the unusual step of sanctioning Dixon by barring him from filing noncriminal Petitions without payment of a filing, fee and compliance with document format rules. See, Dixon v. City of Minneapolis, 547 U.S. 1016, 1016 (2006).

nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." In addition, the signing party must attest that his "factual contentions have evidentiary support," or are likely to have evidentiary support after discovery. We apply an "objective reasonableness standard" in determining whether a party has violated Rule 11, see, Pulaski County Republican Committee v. Pulaski County Bd. of Election Commissioners, 956 F.2d 172, 173 (8th Cir. 1992), and that standard also applies to pro se litigants who file Complaints involving the same legal parties, and the same theories, as a case that was previously dismissed. See, Carman v. Treat, 7 F.3d 1379, 1381 (8th Cir. 1993); Kurkowski v. Volcker, 819 F.2d 201, 204 (8th Cir. 1987).

The Deutsche Bank Defendants, and Balboa, are not seeking monetary sanctions, but rather, they ask the Court to limit Dixon's ability to file future actions involving the same facts, and parties, that are at issue in this matter. Here, Dixon's Complaint was filed in June of 2006 and, since that time, he has filed over ninety (90) documents, including numerous voluminous Exhibits. See, e.g., Docket Nos. 124 - 129; 211; 217. In addition, notwithstanding that the Court ruled on his initial Motion for Default Judgment as to the Deutsche Bank Defendants, in January of 2007, see, Order, Docket No. 83, Dixon has repeatedly attempted to renew that Motion. See, Docket Nos. 86, 213, 224. While Dixon denies any ulterior purpose in filing those papers, he has persisted in filing Motions, and supporting documents, that have no apparent merit.

Therefore, we find that, based upon Dixon's repeated past practice of litigating the same issues against the same parties, or their successors-in-interest, as furthered by his vexatious filings in this

case, the Defendants' requested sanction is entirely reasonable. This is not a litigator who, errantly, made a misstep. This is a litigant who refuses to accept an adverse ruling, and relitigates, vexatiously, the very same claims against any party who has any connection to the loss of his house under a foreclosure proceeding that complied with all applicable provisions of Minnesota State law. While we can accept Dixon's anguish in losing his home, that anguish does not justify his ceaseless effort to impose unnecessary legal burdens and expense on those whose acts have been adjudged to have been legal. Given his past history, absent such a sanction, Dixon will merely search his voluminous papers for another entity, and commence the very same claims and, without a filing fee to discourage such a practice -- his appearances are always in forma pauperis – he will have no reluctance to do so.[14]

Accordingly, we recommend that the Motions of Balboa, and the Deutsche Bank Defendants, for Sanctions be granted, and that Dixon be barred from any future pro se filings, as to the parties and issues contained in his Complaint in this action, without prior leave of the Court.

C. Dixon's Motions for Summary Judgment, Motion to Reopen Default Judgment, Motion for Sanctions. Dixon has also filed two (2) Motions for

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[14] We recognize that, under the in forma pauperis provisions, the Court reviews the operative Complaint to determine whether it will survive a Motion to Dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure. However, that review is a decidedly blunt instrument when, facially, highly factual claims, such as those alleged by Dixon, are alleged. Accordingly, we conclude that a sanction more stringent, then simply requiring the review of a proposed Complaint, prior to its filing in this Court, is required.

Summary Judgment, see, Docket Nos. 211, 213, as well as a Motion to Reopen Default Judgment, and a Motion for Sanctions. See, Docket No. 213. We have considered Dixon's submissions, in weighing the merits of the Defendants' Motions for Summary Judgment and, based on the foregoing analysis, we recommend that those Motions be denied, and that Summary Judgment be entered in favor of the Defendants.[15]

NOW, THEREFORE, It is --

RECOMMENDED:

1. That the Deutsche Bank Defendants' Motion for Sanctions [Docket No. 183] be granted.

2. That the Deutsche Bank Defendants' Motion for Summary Judgment [Docket No. 189] be granted.

3. That Balboa's Motion for Sanctions [Docket No. 195] be granted.

4. That the Plaintiff's Motion for Extension of Time to File [Docket No. 201] be denied, as moot.

5. That Balboa's Motion for Summary Judgment [Docket No. 203] be granted.

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[15] Specifically, we have already denied Dixon's Motion for Default Judgment, as to various Defendants in this matter, several times. See, Docket Nos. 49, 86. From his submissions, Dixon appears to believe that the Court may award a Default Judgment, as to a defendant, when that party files a Motion for Summary Judgment which Dixon regards to be unwarranted, or submits discovery responses, with which he disagrees. See generally, Docket No. 214. However, a Default Judgment is reserved for those instances where a party "has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise," Rule 55(a), Federal Rules of Civil Procedure, and requires a Clerk's Entry of Default before the merits of such a Judgment can be considered by the Court. In this case, as each of the Defendants has filed an Answer, see, Docket Nos. 16, 18, 80, we find, once again, that Default Judgment is inappropriate.

6. That the Plaintiff's Motion for Summary Judgment [Docket No. 211] be denied.

7. That the Plaintiff's Motion for Summary Judgment [Docket No. 213] be denied.

8. That the Plaintiff's Motion for Order/Judgment Regarding Returned Court Documents [Docket No. 224] be denied.

Dated: August 1, 2008 s/_____
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than August 18, 2008,** a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a. transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing by no later than **August 18, 2008,** unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Joseph Dixon,

CLERK'S ENTRY OF DEFAULT

Plaintiff(s) Case Number: 06cv2858 PJS/RLE

v.

Deutsche Bank National Trust Company and Nationscredit Home Equity Loan Trust,

Defendant(s)

It appearing that defendant(s) Deutsche Bank National Trust Company and Nationscredit Home Equity Loan Trust, is in default for failure to plead or otherwise defend in this action, as required by law, now, therefore, on application of plaintiff,

DEFAULT IS HEREBY ENTERED against Deutsche Bank National Trust Company and Nationscredit Home Equity Loan Trust

this 2nd day of November, 2006.

RICHARD D. SLETTEN, CLERK
s/JMH

(By) JMH Deputy Clerk